

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

April 10, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3361

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE INTEREST OF JAMIE S.,
A PERSON UNDER THE AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JAMIE S.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Crawford County:
MICHAEL KIRCHMAN, Judge. *Affirmed.*

VERGERONT, J.¹ Jamie S., a juvenile, appeals from an order waiving juvenile jurisdiction over him. He contends that the trial court erroneously exercised its discretion in deciding to waive juvenile court

¹ This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

jurisdiction. We conclude that the trial court properly exercised its discretion. We therefore affirm.

Jamie's date of birth is January 13, 1980. The delinquency petition charged him with three counts of recklessly endangering safety, contrary to § 941.30(1), STATS. All three counts stem from an automobile accident on May 30, 1996, in which a car driven by Jamie collided head-on with a squad car driven by a Crawford County deputy sheriff. The deputy sheriff and two juvenile passengers in Jamie's car were injured in the accident. None of the injuries were life-threatening.

The State filed a petition for waiver of jurisdiction, pursuant to § 48.18, STATS. At the waiver hearing, the State offered the basis of the juvenile delinquency petition for prosecutive merit. The court accepted the offer and found prosecutive merit. After hearing the testimony of witnesses and the arguments of counsel on waiver, the trial court entered an order waiving the jurisdiction of the juvenile court.

Section 48.18(5), STATS., provides that if prosecutive merit is found, the judge shall base the decision whether to waive jurisdiction on the criteria stated in paragraphs (a) through (d).² Section 48.18(6) provides that after the

² Section 48.18(5), STATS., provides in relevant part:

(5) If prosecutive merit is found, the judge, after taking relevant testimony which the district attorney shall present and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled, whether the court has previously waived its jurisdiction over the child, whether the child has been previously convicted following a waiver of the court's jurisdiction or has been previously found

(continued)

criteria under subsec. (5), the judge shall state his or her findings with respect to the criteria, and if the judge determines on the record that it is established "by clear and convincing evidence that if it would be contrary to the best interests of the child or of the public to hear the case, the judge shall enter an order waiving jurisdiction."

Waiver of jurisdiction under § 48.18, STATS., is within the discretion of the juvenile court. *In re J.A.L.*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). The court is to regard the best interest of the child as the paramount consideration. *Id.* The court has discretion as to the weight it affords each of the criteria under § 48.18(5). *Id.* We look to the record to see whether discretion was exercised, and if it has been, we look for reasons to sustain the court's decision. *Id.* at 961, 471 N.W.2d at 501. We will reverse a juvenile court's waiver determination if and only if the record does not reflect a reasonable basis for its determination, or the court does not state relevant facts or reasons motivating the decision. *Id.*

delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the child's motives and attitudes, the child's physical and mental maturity, the child's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

(b) The type and seriousness of the offense, including whether it was against persons or property, the extent to which it was committed in a violent, aggressive, premeditated or wilful manner, and its prosecutive merit.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system, and, where applicable, the mental health system.

At the waiver hearing, the State called two witnesses, Prairie du Chien Police Chief Gary Knickerbocker and Sandy Drobnik, a social work supervisor at Crawford County Department of Human Services. Knickerbocker testified that when he arrived at the scene of the accident, he observed a 1981 Chevrolet Citation in the west bound lane that was totally destroyed and a squad car up against a concrete barrier with its front end destroyed. Based on the information he gathered from approximately twenty interviews, he described the circumstances of the accident as follows. On May 29, 1996, Jamie and two friends met at a place called Spinners. Jamie was driving a 1981 Chevrolet Citation. Jamie and his two friends rode around town for awhile and then went to the Villa Oasis Restaurant in the City of Prairie du Chien where Jamie and one of his passengers "huffed" (inhaled) Glade aerosol. Jamie and his two passengers drove around again and then left for Husher Park near Wauzeka with two other vehicles.

The three vehicles then stopped at a wayside and one of the other drivers stated that Jamie almost hit his car at the wayside. A couple of other witnesses stated that Jamie and one of his passengers continued to huff Glade after leaving the wayside. After leaving the wayside, Jamie's vehicle was the second of the three vehicles. Just before the accident Jamie huffed Glade and then appeared to fall asleep or pass out and then crossed the center line and collided with the squad car that was traveling west on Highway 60. The deputy sheriff received an injury to his left shoulder. Jamie apparently had some neck injuries or internal injuries. One of Jamie's passengers had glass fragments in his eyes that had to be removed. The third passenger in Jamie's car did not sustain any injuries.

Knickerbocker testified that he contacted the Wisconsin State Crime Laboratory about the effects of huffing aerosol. The crime lab indicated that

Glade was a chemical isobutane with propane and that when inhaled this chemical replaces the oxygen in the brain and gives a person a feeling of being "high." Some of the effects are that the person gets warm feet and sometimes passes out from the oxygen being displaced in the brain. The crime lab also indicated to Knickerbocker that a blood sample would probably not show any evidence of the chemical unless it was collected within a half an hour after inhaling. Knickerbocker testified that Jamie's blood sample did not show any signs of ethanol. However, there was a quantity of Delta-9 THC, which is the active ingredient in marijuana.

Sandy Drobnik testified that Jamie has twice been placed on informal supervision. She supervised him once in July 1994, originally for sixty days, as a result of breaking into and taking items from a vehicle. Jamie completed the restitution and community service hours within the sixty days. However, the supervision was extended for thirty days due to Jamie's attitude problems at home. Drobnik stated that Jamie was defiant and noncompliant with the rules at home. The second informal supervision was in September 1993 for damage to property as a result of breaking a window at Seneca School.

Drobnik testified that there was another referral to the department for fighting. There was also a municipal citation for retail theft and an incident involving throwing rocks at a car which was referred to the district attorney's office, but was settled by an insurance payment. There was no record of Jamie being placed on formal supervision.

Drobnik testified that in her opinion the only reason that the juvenile system might not be appropriate was the inability of the juvenile court to order

treatment under the then-current juvenile code.³ Drobnik thought an in-patient evaluation would be appropriate because of the huffing problem. However, Drobnik recommended formal supervision rather than waiver.

The trial court made these findings with respect to the criteria for waiver. The court acknowledged that it did not have information on important areas such as Jamie's attitude, home life and school activities. However, the court found that Jamie was going to be seventeen years old in less than a few months and that the adult court could accomplish things that are no longer available in the juvenile court or would not work given Jamie's age. The court also found that the offense charged involved dangerous conduct resulting in injury to other persons. The court stated that the conduct in this case—huffing—even though it may not be illegal, is dangerous because of the likelihood of passing out. Therefore, to drive a vehicle and to be huffing at the same time is very dangerous conduct; in this case it caused injury to others and it could have been much more serious.

The court also found that Jamie had a substance abuse problem. The court stated that while the huffing might not be criminal conduct it is, nevertheless, substance abuse. The court also noted that there was evidence of marijuana use and that although there was no evidence Jamie was under the influence of marijuana at the time of the accident, the marijuana taken together with the huffing indicated that there was a substance abuse problem that needed to be addressed. Finally, the court concluded that, giving greater weight to the offense charged, Jamie's age and the available sanctions and consequences in the

³ The petition for waiver in this case was brought pursuant to § 48.18, STATS., 1993-94. The new juvenile waiver section is now under the Juvenile Justice Code ch. 938, STATS., 1995-96.

adult court, it would be contrary to the best interests of the child and the public to retain this case in the juvenile court.

Jamie contends that the trial court erroneously exercised its discretion in ruling that the waiver was in his best interest and in the best interest of the public. Jamie maintains that the court erred in weighing and assessing the evidence in several ways. He argues that the trial court did not properly consider the evidence related to his prior juvenile record, the seriousness of the offense, on the adequacy and suitability of facilities and services within the juvenile system.

The court did consider the testimony relating to Jamie's prior juvenile record, the seriousness of the offense and the adequacy and suitability of facilities and services within the juvenile system. The court considered Jamie's offense to be very serious because of the potential injury to himself and others by driving while huffing. Jamie disagrees with the court's assessment of the seriousness of the offense, but the trial court's assessment is a reasonable one. In the court's view, the seriousness of the offense weighed heavily in favor of waiver. The weight assigned to each factor is within the trial court's discretion: *In re J.A.L.*, 162 Wis.2d at 960, 471 N.W.2d at 501. While Jamie's prior record may well have militated against waiver, the court need not resolve all the statutory criteria against the juvenile to properly order waiver. *In re G.B.K.*, 126 Wis.2d 253, 256, 376 N.W.2d 385, 388 (1985). It is not an erroneous exercise of discretion for the court to give heavy weight to the severity of the offense. *Id.* at 260, 376 N.W.2d at 389.

With respect to the adequacy and suitability of facilities and services within the juvenile system, the court did consider in detail the various options available. It concluded that because of Jamie's age certain of those options were

not appropriate such as foster care, group homes and foster home placement. The court also considered that, while confinement in the juvenile correctional facilities was not warranted at this time, consequences more serious than formal supervision--such as jail as a condition of probation--were warranted. It also concluded that appropriate assessment and treatment were necessary for his substance abuse problem.

The statute does not require the State to prove there are no adequate alternatives to waiver in the juvenile system. *In re G.B.K.*, 126 Wis.2d at 256, 376 N.W.2d at 388. Rather, the statute requires that when evidence is presented as to a particular criterion, the court consider that criterion and make a finding concerning that criterion. *In re C.W.*, 142 Wis.2d 763, 769, 419 N.W.2d 327, 330 (Ct. App. 1987). This the trial court did. Its conclusion that the facilities and services within the juvenile system were not suitable for Jamie is a reasonable one.

We conclude there was a reasonable basis in the record for the trial court's decision to waive juvenile jurisdiction, and it did not misuse its discretion in doing so.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

